

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEBRASKA

PATRICK RONALD RUSSELL,)	
)	
Plaintiff,)	4:11CV3036
)	
v.)	
)	
DIANA SABATKA-RINE, et al.,)	MEMORANDUM OPINION
)	
Defendants.)	
)	

This matter is before the Court on its own motion. On May 9, 2011, the Court required plaintiff to show cause why he is entitled to proceed in forma pauperis ("IFP") pursuant to the provisions of 28 U.S.C. §1915(g) ("§ 1915(g)") (Filing No. 8). Plaintiff did not file a response to the Court's memorandum and order and this matter will be dismissed.

I. BACKGROUND

On March 16, 2011, while incarcerated, plaintiff filed a complaint (Filing No. 1) and a Motion for Leave to Proceed IFP (filing no. 2). On May 9, 2011, the Court ordered plaintiff to either show cause why he is entitled to proceed IFP or pay the full \$350 filing fee, or his case would be dismissed (Filing No. 8). The Court's previous memorandum and order was based on its finding that plaintiff brought the following three cases while incarcerated, which were dismissed because they failed to state a claim upon which relief may be granted or because they were frivolous:

- *Russell v. Whitson*, No. 4:94CV3306 (D. Neb.), dismissed for failure to state a claim upon which relief may be granted on November 4, 1994.
- *Russell v. Pehrson*, No. 4:94CV3297 (D. Neb.), dismissed as frivolous and for failure to state a claim upon which relief may be granted on November 8, 1994, and March 20, 1995.
- *Russell v. Clarke*, No. 4:91CV3184 (D. Neb.), appeal dismissed as frivolous on November 6, 1991, and affirmed as frivolous on January 13, 1991.

Plaintiff did not file a response to the Court's May 9, 2011, memorandum and order and has taken no other action in this matter. (See Docket Sheet.)

II. ANALYSIS

A prisoner may not bring a civil action or proceed IFP if the prisoner has, on three or more occasions, while incarcerated, brought an action or appeal in federal court that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted.

§ 1915(g). An exception is made for prisoners who are under imminent danger of serious physical injury. *Id.*

In its previous memorandum and order, the Court ordered plaintiff to show cause why his case should not be dismissed pursuant to § 1915(g) (Filing No. 8). The Court listed three cases brought by plaintiff that were dismissed as frivolous or because they failed to state a claim upon which relief may be granted. (*Id.* at CM/ECF p. 1.) For plaintiff to proceed IFP, he

needed to show the Court that any or all of the three dismissed cases do not meet the criteria set forth in § 1915(g) or, alternatively, that he faces imminent danger of serious physical injury.

Plaintiff did not respond to the Court's May 9, 2011, memorandum and order. (See Docket Sheet.) Thus, plaintiff has not shown that he faces any imminent danger of physical injury. In light of this, plaintiff is not entitled to proceed IFP, nor has he paid the full \$350 filing fee. For these reasons, this matter will be dismissed. A separate order will be entered in accordance with this memorandum opinion.

DATED this 7th day of July, 2011.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court

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